

APPEALS PANEL – 12 AUGUST 2021

OBJECTION TO TREE PRESERVATION ORDER - TPO / 0002/21

LAND ADJACENT TO CHAPEL LANE LANGLEY

1. SUMMARY OF MAIN ISSUES

The key issues are

- 1. The public amenity value of the woodland and its value to the wider community.**
- 2. The expediency to protect these trees**

2. TREE PRESERVATION ORDER HISTORY

2.1 The site is located at the end of Chapel Lane adjacent to the property known as ‘The Ruffs’ and the New Forest National Park boundary. The site is adjacent to open forest which is designated a SSSI (Site of Special Scientific Interest).

2.2 The order was made as result of request from Fawley Parish Council who raised concerns with New Forest District Council by the amount of tree work being carried out on the site and signs erected stating ‘cord wood’ for sale. Following on from this the owner made and application for a lawful development certificate to install running water and a toilet facility within the site.

A TPO was made in August 2020. Due to COVID restrictions the objection made by the owner of the site could not be heard and this TPO expired, so a new Order was made on 18 February 2021.

The owner of the site, Mr B Smith, put in writing his objections to the order.

3. The Woodland

3.1 The woodland consists mainly of mature English oak with some beech trees. This site is largely devoid of understory as this has been removed by the owner prior to the Tree Preservation Order being made. It is understood that the majority of understory removed were invasive Rhododendrons and cherry laurel. Currently there are no signs of natural regeneration and it appears that vehicles are now being driven into the woodland. There is a small stream running through this site and this has been further excavated.

4. Objections to the Order

Mr Smith put his objections in writing on 15 March 2021, and the main points are summarised below:

- Amenity - the woodland does not offer significant amenity to the area as the site is located at the end of a road.
- Expediency – There is no evidence or grounds for the woodland order because no tree with amenity value has been removed.

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- Good forestry practice – the trees that have been removed on site are in line with the Invasive Non-Native Species Frameworks Strategy for Great Britain (2015).
- Woodland management plan – The blanket woodland TPO has hindered urgent works required on site under the current woodland management plan.
- Compliance with legislation – There is a legal requirement to prevent *Rhododendron ponticum* spreading on to the adjoining SSSI.
- There are errors in the Order.
- Compensation – Mr Smith believes he would be entitled to a high level of compensation for future refusal to any consent under the order.
- Human rights – The blanket woodland Order deprives Mr Smith of the use of the trees.
- Biodiversity – The woodland order prohibits Mr Smith from removing non-native, invasive species. Mr Smith cannot plant any new seedlings as they will be out-competed by the mature trees on site.
- The significance of this woodland is low compared to other woodland around Fawley oil refinery that is not protected.
- The water table on the site is too high to maintain large trees on site and several trees have fallen in the last 10 years.
- The woodland order will prevent the site being opened up for recreation and use by the public.
- The woodland order prevents Mr Smith managing the Hazel coppice.
- The site has been grown for timber production and it is part of the ongoing viability of the site for there to be periodic thinning of the trees.
- Timber from the trees converted into wood products will prevent carbon being released through decomposition.
- The woodland order prevents Mr Smith from carrying out his woodland management plan to enhance biodiversity.
- Permission to carry out works is valid for 2 years. It is not possible to run a coppicing business and plan for the future when there is no guarantee that consent will be granted to coppice trees in the future.

5. TREE OFFICER’S COMMENTS ON THE GROUNDS FOR OBJECTION

- Amenity – the site is situated at the end of Chapel Lane and the trees and woodland are visible from the public highway. The western boundary of the woodland is visible from publicly accessible open forest. This small woodland

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forms an important screen between the open forest and the dwellings and suburban development of Fawley.

- Expediency – The woodland order does not protect trees that have been previously removed but the trees currently on site, which collectively have high amenity value. Without this protection all the trees within this site could be removed. Mr Smith seems to have multiple plans for this site, such as opening it to the public for recreational use, although the precise manner has not been alluded to in the objection letter. However, the uses Mr Smith has outlined would likely conflict with retaining the mature trees (such as planting a commercial Christmas tree plantation). Mr Smith in his objection states that he is looking to remove the mature trees in order to establish new seedlings. This clearly indicates the mature trees, that contribute both to the amenity and the biodiversity in the area, are under threat without a Tree Preservation Order on this land.
- Good forestry practice - The woodland tree preservation Order would not prevent compliance with legislation to remove invasive species.
- Woodland management plan – Any works that are required to abate a legal nuisance or for a dangerous tree is exempt from application and can be carried out within 5 days if the applicant contacts the New Forest District Council with a clear specification of the hazard and the works required to make this safe. All others works can take up to 8 weeks to approve through the tree work application process, in line with the time frame set out in the legislation. I note that no woodland management plan has been submitted to New Forest District Council, although Mr Smith has now submitted a ‘Small woodlands management plan’ to the Forestry Commission (England) to assess.
- I referred Mr Smith’s comments regarding ‘errors’ in the TPO to our legal department, who did not support this claim. However in light of the change of name for the site, the existing TPO title can be modified to reflect this and changed to “Land of Blackwell Forest”.
- Compensation – Mr Smith has not outlined what compensation he believes he is entitled to. However, land owners cannot claim for perceived loss of land value if the site is ‘undevelopable’ due to the imposition of the order.
- Human rights - The overall amenity and benefit to the public that this woodland provides to the public over-rides Mr Smith’s individual rights. This woodland is not within a private garden that is connected to a dwelling. It is not clear what Mr Smith means by “use” of the trees.
- Biodiversity – According to Mr Smith the limited number of tree species on site is a lack in biodiversity, however the native species and distribution reflects the species distribution across the New Forest. It has been shown that older trees support a far greater number and variety of species than young trees. I am also concerned by the out-dated recommendation for importing trees from further provenance ranges, this recommendation is dated to 2008. Since then a number of new pests and diseases have been identified across continental Europe and the advice is now to source trees stock locally. It appears Mr Smith’s intention to plant seedlings from numerous sources and remove the mature trees on site, is likely to directly harm the trees on site. Although under a woodland TPO this authority does not have the powers to prevent Mr Smith planting any new trees, Mr Smith would have to comply with plant health regulations. Mr Smith states he has the support of the Land Advice Service (a

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service that is funded by the New Forest National Park and Hampshire and Isle of Wight Wildlife Trust). Mr Smith has recently submitted a letter from New Forest Land Advice Service dated 7th September 2020. This letter supports the removal of the of the non-native plants such as the invasive *Rhododendron ponticum* and the Cherry Laurel (good forestry practice that the woodland TPO would not prevent – removal of shrub species are not protected by the Woodland TPO). The letter also recommends the removal of the Western Red Cedar trees (this work has been permitted through a tree work application and has now been carried out, again the TPO did not prevent this management). All the advice written in this document is reasonable management that would not be prevented under the TPO. I also note that Mr Smith is not following all this advice as he has already planted this site with osier willows saplings and not followed the advice to allow the site to regeneration naturally.

- The significance of this woodland is low compared other woodlands not protected. The Panel is looking at the objections relating to this site only, and other land is not part of the consideration of this Panel. Given the location of this site between open SSSI forest and urban development, this woodland is highly important to the character of the New Forest and surrounding area.
- The water table on this site is too high and unable to support large trees – the mature oaks on this site are estimated to be 50-100 years old and have seemingly grown successfully for this time. Several trees have fallen in recent years but this may be a result of the removal of all ground cover on this site and the associated soil erosion that has now occurred, excavating the stream and accessing this site with vehicles.
- The woodland order will prevent the site being opened up to the public for recreational use. Mr Smith has not provided any details on why the TPO would prevent this. Or what form this recreational use will take. However, Mr Smith does not need permission under a Tree Preservation Order to allow members of the public to access the site. Numerous public woodland in Hythe is protected by woodland orders and this does not prevent access to these woodlands.
- The woodland order prevents Mr Smith coppicing hazel. A rolling consent for up to 10 years can be issued through a tree work application to overcome this problem (however Mr Smith applied for a rolling consent for 100 years, this was deemed excessive and duly refused).
- The site has been grown for timber, and a woodland order prevents Mr Smith from harvesting his trees. The point of a Tree Preservation Order is to prevent inappropriate tree removal, trees that have public amenity value. However, if Mr Smith does want to harvest his trees, then he will need to obtain a Felling licence from Forestry England. A Felling licence overrides the Tree Preservation Order and therefore Mr Smith would not have to get consent from New Forest District Council through a tree work application to carry out this work.
- Timber products will store carbon. I have not seen any scientific evidence that supports the cutting down of trees as a way of storing carbon. The associated soil erosion and damage to the soil through converting the trees into wood products releases more carbon than would be stored in wood products. This is because large amounts of carbon are required to fell the trees, transport the trees, and process into products. A significant number of trees would have to be removed to make 450m of fencing.

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- The woodland order prevents Mrs Smith from managing his woodland for biodiversity. A woodland TPO only prevents the felling or pruning of trees without consent. Appropriate and proportional tree management and good arboricultural practice is welcomed by this authority. A woodland Order does not prevent a land owner planting trees. New Forest District Council would welcome a woodland management plan that has clear objectives for the site and sympathetic management of this woodland.
- Permissions for consent last 2 years and it is not possible to run a coppicing business. See the above comment in regards to Hazel coppicing and the potential of a 10 year rolling consent.

6. POLICIES

Relevant Legislation

Town and Country Planning (Tree Preservation) (England) Regulations 2012

7. PLANNING HISTORY

20/11475	Use of the woodland to one of education for use as a forest school for children & adults; use of the woodland for educational use to run Arboriculture Assessments; Car park on site for four cars; Bicycle parking for 50 bikes; Construction of two identical composting toilet structures; stock proof pen; Use of the stock proof pen for the temporary grazing of pigs, chickens, horses, cows or donkeys; Placing of a sign outside the front gate confirming the name of the site	Incomplete application
20/11031	Use of the Site for outdoor schooling of children and adults in all aspects of forestry; Use of the Site for animal husbandry including the raising of livestock including chickens and pigs; The construction of a stock proof pen measuring approximately 20 metres by 15 metres. Use of the Site each year for the temporary grazing of horses, cows and donkeys as necessary and also if required by the Verderers that animals grazing within the New Forest are to be temporarily taken off of the New Forest for any reason; and Siting of caravan / shepherds hut for forestry use only. (Lawful Development Certificate that permission is not required for proposal)	Application for lawful development certificate - refused
20/10373	A toilet and wash basin (Prior Approval Application)	Withdrawn

8. PARISH / TOWN COUNCIL COMMENTS

Fawley Parish Council

Fawley Parish Council support the Order - comment submitted 15 March 2021.

(Fawley Parish Council Minute number 20/162 and 20 /178 a) ii of the meeting held on 10 March 2021 refers)

9. COUNCILLOR COMMENTS

None

10. CONSULTEE COMMENTS

None

11. REPRESENTATIONS RECEIVED

None

12. CONCLUSION

A local planning authority may only make a tree preservation order where it appears to the authority that it is expedient to protect a tree or woodland in the interests of amenity. This small woodland is clearly visible to the public and is a vital buffer between the open forest and the suburbs of Fawley.

It is expedient to protect these trees as Mr Smith has made several approaches to our planning team outlining development plans on this site, there also seems to be an ambition to fell the mature trees for timber and to facilitate new tree planting.

Loss of the mature tree cover in this woodland would irreversibly affect the character and amenity of the area.

RECOMMENDATION

That this Woodland Tree Preservation Order TPO / 0002/21 be confirmed, with the minor modification to amend the title to reflect the change of name of the site to ‘Land of Blackwell Forest Chapel Lane, Langley’.

For further information contact:

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